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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re GILBERT C., et al., Persons Coming  
Under the Juvenile Court Law.

B225365  
(Los Angeles County  
Super. Ct. No. CK 67619)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

IRENE P.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. David R. Fields, Judge. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

Mother Irene P. appeals the dependency court's order terminating her parental rights to her two children Gilbert and Gabriel. She argues the dependency court erred in finding the benefits exception of section 366.26, subdivision (c)(1)(B)(i) did not apply.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

#### *1. Detention, March 28, 2007.*

The children Gilbert (born December 2003) and Gabriel (born November 2005) came to the attention of the Department on March 28, 2007 as a result of a domestic violence call to the home of parents Irene P. (Mother) and Isaias C. (Father). Police observed Mother's cheeks were red, but she stated that "nothing" had happened, and refused medical attention. Police concluded there was no evidence of a crime; however, the children were detained and placed in the foster home of Elena B.

Mother and Father had known each other for six years; they have the two children, Gilbert and Gabriel, together. In an interview on March 29, 2007 with the social worker, Mother, who had a black eye, admitted one incident of domestic violence occurred in October 2006, when during a verbal altercation Father slapped her. Mother claimed that on March 28, 2007, she and Father were arguing in the kitchen when he left the house. She followed him outside and fell, striking her eye in the stairway. Mother denied that Father used her welfare check to buy drugs. Mother disclosed that in November 2006, a referral to the Department based on allegations of general neglect was closed due to loss of contact with the family. Father also denied domestic violence, but admitted he and Mother argued on a regular basis. He denied substance abuse.

Father and Mother lived in a home shared with another family, where they rented a room. Lily G., one of their roommates, told the social worker that in February 2007 she had witnessed domestic violence between Mother and Father, and that the children had been in the room at the time. Lily G.'s daughter told the social worker Father called Mother a "slut," "bitch" and "whore" in front of the children. Lily G.'s son also told the social worker he believed Father hit Mother because of the yelling and loud noises he heard coming from their bedroom. Maternal grandmother Martha P. told the social worker that Mother sometimes came to visit her with black eyes.

2. *Detention Hearing, April 3, 2007.*

The section 300 petition filed April 3, 2007, alleged physical harm and failure to protect. (§ 300, subds. (a), (b).) At the detention hearing held April 3, 2007, the court found Father was the presumed father and ordered the children detained. The court ordered reunification services and visitation, but Mother and Father were ordered not to visit at the same time.

3. *May 3, 2007 PRC.*

The Department's report stated that the children remained in foster care. Father had prior history with the Department; his three children from a relationship with another woman (who was Mother's stepsister) were declared dependents of the court in March 2003 as a result of findings the children's mother had kept chemicals for the use of methamphetamine manufacture in the home. Father failed to reunify with these children, who were placed with a legal guardian.

At the time of the parents' November 2006 referral, they told the Department they had been homeless for two years, but after the case was closed, the Department lost contact with the parents. Father's live scan showed prior arrests and one conviction for corporal injury to a spouse or cohabitant. In an interview with the Department on April 24, 2007, Father admitted to drinking on March 28, 2007, the day he got in the argument with Mother and the Department detained the children.

Lily G. stated the parents did not return to her house after March 29, 2007. When she cleaned out their room, she found glass pipes that she assumed were used for drugs.

Neither parent had finished high school.

At the pretrial resolution conference held May 3, 2007, the court continued the matter to May 14, 2007 for mediation.

4. *May 14, 2007, Mediation.*

On May 14, 2007, the Department filed an amended petition, alleging counts under section 300, subdivision (a) and (b), based on Father's abuse of methamphetamine. The Department's report stated that the children remained in foster care with Elena B.

The Department was in the process of assessing possible relative placements for the children.

The court continued the matter to May 22, 2007 for adjudication.

5. *May 22 and 24, 2007 Adjudication.*

After obtaining waivers from the parents of their trial rights, the court sustained the allegations of the amended petition under section 300, subdivision (a) and dismissed the counts alleged under section 300, subdivision (b). The court ordered family reunification services, including domestic violence counseling, parent education, individual counseling, six weekly random drug tests with rehabilitation if the parents submitted a dirty test; and visitation three times a week, with the parents to visit separately.

6. *November 5, 2007 and December 10, 2007 Six-Month Review.*

The Department's report stated that the children remained in foster care. Gilbert was attending preschool. The parents were "unstable" and were struggling to comply with their case plans. The social worker had advised the parents of the importance of living separately so they could address their treatment goals.

An October 18, 2007 Team Decision Meeting was held. Mother was aware that she and Father had not complied with their treatment programs, and Father denied any domestic violence. Mother had enrolled in an outpatient substance abuse program, but Father was unable to provide verification that he had enrolled in domestic violence, anger management, or parenting classes.

Since May 1, 2007, the parents had been enrolled at an inpatient program at Shields for Families, which provided alcohol and drug counseling, life skills, domestic violence counseling, parenting classes, anger management, counseling, and drug testing. Both parents were in violation of the program's rules. Father claimed his attendance was poor at the program because he needed to work, but could not provide verification of his employment because he was being paid in cash. The Department suspected Father had been selling his bus tokens to raise cash. Mother had violated program rules by sneaking Father into her room and lying about her visits with the children.

Mother suffered a drug relapse in September 2007, admitting to methamphetamine use. In October 2007, Mother was discharged from the program for an infraction of the rules, although she completed parenting and nutritional health classes. Mother had also tested positive for methamphetamine. The parents enrolled in a substance abuse program through People in Progress, which required three group sessions and one individual session per week. The parents also enrolled in a domestic violence program. In October 2007, the parents both obtained restaurant work. They had the same shift and worked together.

The children continued to do well in their foster placement. While the parents had been enrolled in Shields for Families, they missed several visits with the children, although they had checked out of Shields for the day. The Department suspected the parents were using the time to spend together rather than visiting the children. In October 2007, Mother was visiting the children twice a week, and Father started to visit the children. The foster mother reported that neither parent interacted with the children. ““There really isn’t much affection between the parents and the children, just a hug when they arrive, and after that not much, but they do take toys and candy for the children.””

Father denied having a car and became angry when confronted with the fact he was driving. Both parents had two no-show drug tests; Mother had not enrolled in therapy and Father had not enrolled in anger management. The parents were residing at the home of the children’s maternal grandmother. The parents continued to attend their visitation with the children together, but were not flexible about visitation times and canceled visits. The Department continued to recommend termination of reunification services because the parents had not complied with their case plans.

At the contested six-month review hearing, the children’s social worker testified that she had witnessed two visits with the parents and the children in the past month. There was very little interaction between the parents and the children. Gilbert played with toys and the children wrestled with each other. Father had discharged himself from Shields because he did not want to abide by the program rules. The Department noted that Father had no problem enrolling in programs, but did not comply with them. Father

was attending domestic violence classes. However, contrary to the court's order the parents continued to attend visitation together.

Mother had attended 24 out of 52 required domestic violence counseling sessions. She had also attended 24 drug counseling sessions. Mother had completed her parenting classes while at Shields. Although the parents would arrive together for visitation, they would visit the children separately. Father had attended fewer than six domestic violence classes while at Shields. The Department recommended termination of reunification services because the parents had not complied with their programs.

The court continued family reunification services, finding the Department had failed to establish the parents' noncompliance with their case plan. The court continued the matter to June 9, 2008.

7. *April 22, 2008 Progress Hearing.*

On March 21, 2008, Father requested that he be allowed to visit the children with Mother. On April 1, 2008, the court ordered a walk-on report to address the Department's recommendation that the parents be allowed to visit the children together. The Department's report stated that the children remained in their foster home placement. The parents had started unmonitored visitation on April 3, 2008. The parents were interacting well with the children, and had a respectful attitude towards the social workers. They were attending substance abuse and domestic violence programs together, and were arriving on time and actively participating. Both parents were attending individual therapy.

Mother and Father were living in a two-bedroom rented apartment. The Department noted that the parents had "made great improvement" because they were attending their court-ordered case plans.

At the hearing, the court allowed unmonitored visits for the parents and permitted them to visit the children together.

8. *June 9, 2008 12-Month Review Hearing.*

The Department reported that on May 6, 2008, a Team Decision Meeting was held. The parents were participating in a drug program, domestic violence, parenting

classes, drug testing, and individual therapy. The social worker visited their apartment and found it clean and well organized. The Department recommended weekend overnight visits with the children. Father was employed, and Mother intended to look for employment. Gilbert had been referred to Regional Center for language and speech evaluation. The parents told the Department that they were willing to do what it took to keep their children. The Department found the parents had made significant progress, and recommended the children be returned to the parents.

At the hearing, the court found return of the children to the parents would not create a substantial risk of detriment to them. The parents had complied with their case plans and their visits with the children had gone well. The court ordered the children be placed home with their parents, and the Department was ordered to provide family maintenance services and to follow up on speech and language evaluations for the children.

9. *December 8, 2008 Review Hearing.*

The Department reported that the children were residing with Mother and Father. The parents had been given a three-day notice at their apartment. The Department learned the parents had not paid the rent since March 2008, and owed a total of \$4,507.00 to their landlord. The Department met with the parents on August 6, 2008. Father told the social worker he wanted to move his family to Las Vegas, where his brother had an apartment and a job waiting for him. On August 19, 2008, a Team Decision Meeting was held. Although the parents had been attending domestic violence classes and individual therapy, they had not followed up on their children's speech assessments. The parents planned to stay with family if evicted from their apartment.

On August 25, 2008, the landlord filed an unlawful detainer action against the parents. The parents vacated the apartment in early September 2008 and moved in with the maternal grandfather. In September 2008, the caseworker visited the residence and found it to be neat and clean. Unfortunately, the family moved again to the home of the paternal grandfather. During the day, they had to go to Mother's sister's home in

Montebello. In mid-October, the family had moved to a paternal great-aunt's home. In December 2008, they moved to the home of a maternal aunt.

Both children had speech and language delays. Although both children had been referred to Lanterman Center, the parents had not followed through in obtaining them assessments. Gilbert had received speech therapy while living with his foster parents, but he had not received any therapy since moving back in with his parents. Gilbert was not attending school. The children began receiving therapy due to aggressive behavior, but the parents had not followed through.

Although Mother told her social worker she was attending domestic violence classes, the social worker discovered Mother had not attended since May 2008, and had not attended individual therapy since June 2008. In November 2008, Mother began attending again. Father also had failed to attend domestic violence since May 2008, or individual therapy since June 2008. Father began attending again in November 2008. The parents felt they no longer needed the supervision of the Department. The children stated they loved their parents very much.

The Department noted the family had become very unstable again, as they continued to move from one relative's home to another. The family's moves caused stress in the family and limited their ability to comply with their case plan. Both parents were currently unemployed and relied on Calworks for their financial needs, and this was inadequate to sustain appropriate housing.

The Department recommended continuance of reunification services due to the parents' unstable housing and inability to follow through on court-ordered programs.

At the hearing, the court ordered family maintenance services to continue, the Department to assist parents with Regional Center referrals, and ordered a progress hearing for June 2, 2009.

*10. January 23, 2009 Section 342 Petition.*

On January 23, 2009, the Department filed a section 342 petition with allegations under section 300, subdivision (a) and (b) based upon Mother's altercation with her sister, her amphetamine use, and the parents' fights.



The Detention report stated that the children's whereabouts were then unknown. On January 9, 2009, the Department received a referral alleging emotional abuse and general neglect of the children. The social worker arrived at the home to find Mother absent, and Gilbert told the social worker Mother had left because she had a bruised eye. On January 12, 2009, the social worker again visited the house, and observed a bruise on Mother's eye. The parents agreed to cooperate. Mother denied physical abuse, explaining that the bruise was the result of an altercation with her sister. Mother's sister confirmed this story.

Father denied any substance abuse. An on-demand drug test for Mother showed methamphetamine, but Father's test was negative. On January 20, 2009, the Department went to the family's home, and was told by Father's adult son the family had gone to the market. The family never returned.

At the hearing, the court ordered the children detained. The court issued a protective custody warrant.

*11. February 19, 2009 Pre-Trial Resolution Conference.*

On February 17, 2009, the Department received a phone message from Mother stating she would call to discuss the case on February 18, 2009. On February 18, 2009, Father called and informed the Department that Mother was residing in her car while the children resided with a paternal great aunt and cousin. Father blamed the Department for the family's July 2008 eviction because the Department delayed in getting the family funds. Father wanted the case closed and was not interested in family preservation services. Father wished to go to Las Vegas, but could not because of the open dependency case. Father agreed that the children could remain in Los Angeles if he went to Las Vegas. Father agreed to appear in court.

The Department recommended that no reunification services be provided because the parents absconded with the children.

At the hearing, Mother, Father and the children appeared in court. The court ordered a pretrial resolution conference for March 17, 2009, and recalled the warrants.

The court ordered monitored visitation, and requested the Department to evaluate relative placement. The children were placed in a foster home.

*12. March 6, 2009 Prerelease Investigation.*

The Department reported that the children were currently placed in foster care. The Department had evaluated a paternal cousin, Irma E., for placement. The Department found her home suitable. Irma was willing to care for the children, was employed at Kaiser Permanente as a billing clerk, but planned to start a home day care in her house. Irma's home was clean and orderly. However, Irma slept in the living room, which was against Adoption and Safe Family Act (AFSA) regulations.

The court ordered the children placed with Irma, and continued the matter to March 17, 2009.

*13. March 17, 2009, Continued Pretrial Resolution Conference.*

The Department reported the children were residing with Irma. Irma indicated she would adopt the children if reunification failed. Mother admitted using methamphetamine the night before her most recent test because she was stressed about being “kicked out” of her home. She had been unable to reenroll the children in school because of the family's moves.

On March 17, 2009, the Department filed an amended section 342 petition, alleging that Mother had a history of illicit drug use and was a current abuser of methamphetamine.

At the hearing, the parents waived their trial rights and entered a general denial. The court continued the matter to April 9, 2009.

*14. April 9, 2009 Jurisdictional Hearing.*

The Department reported the children continued in their placement with Irma. Father told the social worker that Mother's altercation with her sister was “one time only,” and they had argued over the care of their ailing father. Mother fell and got a black eye. The children were not present at the time. Father knew that Mother had used methamphetamine, and admitted he made a mistake in not getting her help for her

relapse. Once the family became homeless, they were not able to get the children speech therapy. Father had reenrolled in domestic violence and individual therapy.

Mother was participating in drug treatment at the Rena B. Recovery Center. Father had purchased alcohol for another resident at the program. The children's caregiver observed Mother and Father arguing on March 28, 2009, while Mother was on a pass from her program. Father became aggressive and gave Mother "hickies" because he knew that would get her discharged from the program. Father is no longer permitted to visit Mother.

The children were now both over three years old and therefore unable to qualify for Regional Center assessments, but the Department was attempting to obtain speech and language services for the boys through Los Angeles Unified School District.

At the hearing, the court sustained the allegation regarding Mother's substance abuse, amended and sustained the petition's allegation regarding the parents' failure to comply with court orders and absconding with the children, and dismissed the allegation based on Mother's altercation with her sister. The court stated it did not have the discretion to go beyond 18 months in ordering reunification services, and terminated reunification services. The court ordered the children detained, and found it was in the children's best interests to set a hearing for August 20, 2009 under section 366.26 to select a permanent plan for the children.

*15. June 2, 2009.*

A report prepared for a June 2, 2009 hearing<sup>1</sup> stated the children remained placed with Irma. They were thriving in her home, and were more active and verbal. They were developing a strong bond with Irma, who wanted to adopt them. Both children had speech delays. However, their vocabularies had improved and they were talking more. The children were to be assessed for speech therapy when school started in September 2009. Gilbert was receiving therapy, and was afraid of Father. The children were happy in Irma's home.

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<sup>1</sup> The hearing was vacated.

On April 29, 2009, Mother was asked to leave the Rena B. Recovery Center because the staff found a cell phone in her belongings in violation of institutional rules. Mother told the social worker she did not feel the Rena B. Recovery Center was the “right” program for her. Mother intended to start the Detour Program on May 4, 2009, an outpatient program. Mother admitted that she needed to get her “life together” before she could care for the children. Mother told her case manager that Father physically and emotionally abused her. Father currently resided at People in Progress inpatient center. Father’s case manager reported that he was doing well.

The children had been having once a week monitored visits with Mother. Father had weekly monitored visits. During their visits with their parents, the children would make sure they could see Irma, and would ask where she was if they could not see her. Gilbert expressed a preference for living with Irma. Gabriel stated he loves his parents, but enjoyed living with Irma.

*16. August 20, 2009 Section 366.26 Hearing.*

The children remained placed with Irma, who had been identified as the children’s adoptive parent. Gilbert was scheduled to begin elementary school in September 2009. The children received weekly trauma-focused play therapy.

Mother had begun visits in April 2009 and had maintained some consistency in weekly visits. However, since July 2009 Mother’s visits were “nearly non-existent,” and Father had also stopped attending visitation. If he did attend, Father spent much of his time at the visits discussing his case with the case worker, and at one visit, Gilbert admonished him that there was to be “no more talking daddy.”

At the hearing, the court ordered the Department to set up a visitation plan, and continued the section 366.26 hearing to November 19, 2009.

*17. October 8, 2009 Status Review Report.*

The children remained placed with Irma, and had expressed an interest in sports. They were developing a strong bond with Irma, and were very affectionate with her. During one of the most recent visits with Father, he appeared disconnected and was more interested in talking to the social worker about Mother. Father admitted that he and

Mother had used amphetamines the whole time the children were at home, and was able to test negative because he had a way of doing so. In late July, Irma told the social worker that Mother had ended her relationship with Father, and Father believed Mother was exchanging sexual favors for her rent money. In September 2009, Mother told the social worker that she had been living in a recovery housing complex and had not used drugs for seven months.

Gilbert would be receiving an assessment from his elementary school for language and speech therapy. Gabriel was doing well in his day care. The boys had made many improvements since being placed with Irma, and felt safer and more comfortable, displaying a decrease in anxiety.

Both parents were visiting weekly. The children were happy to see their parents, and ran to give them hugs and kisses. At one visit, Mother brought water and snacks, but after an hour and a half, the children became fidgety. At another visit, the interaction was appropriate but the children again became bored, and they began to fight with each other. The parents appeared overwhelmed and unable to cope with the children's behavior. Mother was unable to console Gabriel, who had a tantrum on the floor. At the most recent visit, Mother was on time and came with snacks and a coloring book. The children were happy to see her, and greeted her with hugs and kisses. Mother was more attentive, and engaged them in play. During the final hour of the visit, the children became aggressive, and Mother was unsuccessful in redirecting their behavior. Father did not attend the visit.

At the hearing, the court reduced visits to an hour and a half each.

*18. November 2, 2009 Section 388 Petition.*

Mother's section 388 petition requested additional reunification services. The court summarily denied the petition.

*19. November 19, 2009 Section 366.26 Hearing.*

The Department's last minute information for the court stated that at the November 3, 2009 visit, it was suspected that Father was under the influence of a controlled substance. Both parents were asked to random drug test. Mother's test was

negative, but Father failed to show up for his test and was later discovered in jail. Mother informed the social worker that Father was sentenced to prison for three years for stealing a car with his adult son.

The adoptive mother, Irma, had informed the Department she was not sure she could go forward with the adoption, but that her sister, Ms. A., was willing to adopt the children. At a Team Decision Meeting held November 16, 2009, Irma informed them that she was currently having financial difficulties and her hours at work were being cut. However, her sister, Mrs. A. and her husband were willing to adopt the children; she and Irma had been residing in the same home since the children's placement with Irma. The Department anticipated a home study on Mrs. A. would be completed in mid-March 2010.

At the hearing, due to the change in adoptive parents and Father's incarceration, the court continued the section 366.26 hearing to April 8, 2010.

*20. April 8, 2010 and May 24, 2010 Section 366.26 Hearings.*

The children remained placed with the prospective adoptive parents, Mr. and Mrs. A. The children were developing a close attachment to their adoptive parents and had shown an interest in sports as they enjoyed watching their cousins (age 11 and 12), Mr. and Mrs. A's children, play baseball. Gilbert told the social worker his aunt had signed him up to play basketball and he was looking forward to it. The children had adapted to the routines of their prospective adoptive home. Gilbert woke up early and got ready for school; if the boys misbehaved, they were sent to their room for a "timeout." Gabriel's tantrums have decreased. Gabriel told his therapist his parents would hit him when he misbehaved; he needed reassurance that he would not be physically punished for misbehaving. Both boys want to remain with their adoptive parents.

Gilbert, who is in kindergarten, still continued to struggle with speech and language. He was receiving speech and language services at his school every week. Gilbert enjoyed sports. Gabriel enjoyed playing with his brother and cousins, and was very physically active. Gabriel, who was not school age, worked on his letters, numbers and colors with Mrs. A. Both children received trauma-focused therapy. Gilbert

displayed a fear of getting in trouble and did not like to admit guilt. Both children were receiving counseling to understand adoption in order to ease the transition. Gilbert told the social worker he loves his “tia” and “tio” and wishes to stay in their home. Gabriel stated that he feels safe living with Mr. and Mrs. A. The prospective adoptive parents have been consistent and diligent in obtaining the services the boys need and attending to their physical needs.

Mother continued to have weekly visits with the children. The boys enjoy the visits and are happy to see Mother. At the visits, they eat, play catch, pretend baseball, and hot potato. Mother’s interaction with the children is appropriate, and she is affectionate with the children. At the end of the visits, the boys “never have a difficult time saying goodbye to their mother.” Father had not visited due to his incarceration. Mother told the social worker that although she did not want the children to be adopted, she was aware she could not take care of them.

The Department recommended termination of parental rights and a permanent plan of adoption.

On April 1, 2010, the home study of Mr. and Mrs. A. was approved. Mr. and Mrs. A. have been married for 27 years and have four biological children. Mrs. A. is a homemaker, and Mr. A. is employed as a mechanic.

At the April 8, 2010 hearing, the court continued the matter to May 24, 2010 to permit Father to be transported from prison for the hearing. The matter was again continued to June 22, 2010.

*21. June 22, 2010 Section 366.26 Hearing.*

Both Gilbert and Gabriel referred to their prospective adoptive mother as “mom.” The social worker on a home visit observed the children become very excited when Mr. A. came home early one day from work; they ran to him and gave him a hug. Mr. A. took the boys outside and began playing with them in the yard. The children were making progress in learning to behave.

Mother continued to visit weekly with the children. At one visit, when the children misbehaved and became disrespectful and disruptive, Mother had difficulty in

redirecting them and disciplining them. If the children acted out at the same time, Mother became overwhelmed. At the end of the visit, the children typically remind Mother of what to bring them the next time. Mrs. A. reported that after visiting with Mother, the children would act out more. The children's therapist was working with them to address their strong feelings, self-blame, aggression, and symptoms such as hypervigilance. The children have expressed on several occasions their strong desire to live with the A. family.

Father was incarcerated at the California Correctional Center in Susanville. Mother continued to visit with the children weekly. Mother was doing well in the Detour program and maintaining sobriety. The Department discovered that Mother had falsified program certificates from the Rena B. Recovery Center, and had submitted a certificate for domestic violence from a program during the time she was allegedly residing in the Rena B. Recovery Center and was not able to leave the center for any reason. Mother informed the social worker she does not intend to reunite with Father when he is released from prison. However, Father's adult son told the social worker Mother and Father were in contact and planned on getting married when he was released from prison.

Mrs. A. told the Department she had no intention of keeping the children away from their parents. She indicated that if the parents stabilized and remained sober, and obtained stable housing and employment, she and her family would be happy to facilitate and maintain a connection between the children and their parents. However, if the parents did not stabilize, she would not encourage continued contact because she did not want the children to experience any more trauma.

The Department summarized that the parents completed one year of reunification services, showing "mediocre" compliance. Although the parents reunified in June 2008, their compliance declined and their housing situation became unstable. In January 2009, a referral was received as a result of an altercation between Mother and Mother's sister; Mother testified positive for methamphetamine. When the Department sought to detain the children, the parents absconded with them. Prior to abducting the children, the parents had 14 months of reunification services, followed by six months of



noncompliance. Mother had been discharged from a residential drug treatment program, and provided certificates indicating she had complied with her case plan, but the Department believed the certificates were falsified because the dates did not coincide with the treatment she was receiving at the time.

Currently, the children are in a loving, nurturing and stable home environment. Their mental, physical, emotional, and developmental needs were being met.

At the hearing, Father was present in court. The Department argued that the children were initially detained in May 2007; fourteen months later in June 2008 they were returned to their parents. Eight months later, they were again detained due to the parents' drug use, and the parents admitted the entire eight months they used drugs. Currently, the children had been in the same home since March 2009, and preferred their caretaker to Mother. Father had had limited contact with the children, and all visits had been monitored. Mother similarly had monitored visitation, although she had visited the children consistently. Further, it would be beneficial for the children to be adopted into the caring and loving home where they currently resided.

Mother asked that the court find the exception of section 366.26, subdivision (c)(1)(B)(i) applied because of her consistent visitation with the children and the fact they were happy to see her. Mother argued she acted in a parental role within the confines of these limited visits, the children acknowledged her as their mother, and they were excited to see her.

Father argued that he had regularly visited with the children when he was able, and occupied as much of a parental role as he could within the confines of the dependency proceedings. The children were bonded with the parents, and had lived with them until the most recent detention.

The Department responded that it was Father's criminal actions that had led to his incarceration, and the Mother's lack of compliance with court orders and her drug use that caused the restrictions the parents complained of.

The court terminated parental rights, commencing, "these parents had a chance. I mean, they got what this court strives for initially, a home of parent order back in June of

2008. They squandered that opportunity. By April of '09 the children were detained again because the parents hadn't addressed their issues. [¶] [I]n November of '09 [Father] is arrested for grand theft auto and now he's in prison and will be there until April of 2012. These children do need permanency. They are in a situation where they can be adopted into a home where they've been living now . . . since April of 2009. So over a year or 14 months they've been there. They seem to be adjusting well and I do not find that the exception noted by parent's counsel, . . . but unfortunately for these parents I do not find compelling reasons for determining the termination of parental rights would be detrimental and benefiting the children with this relationship." The court further noted that although Mother visited once a week and brought them things, the visitation did not meet the exception. The court freed the children for adoption.

## **DISCUSSION**

Mother argues the dependency court erred in finding the benefits exception of section 366.26, subdivision (c)(1)(B)(i) did not apply. She argues she maintained regular visitation with Gilbert (who was three at the time of the initial detention) and Gabriel (who as 17 months at the time of the initial detention). Even after the children were detained once again in February 2009, she contends her visits with the children went well and she visited them consistently. She argues the children benefited from her visits because although she was unable to play a day-to-day role in their lives, she occupied a parental role that was significant and positive. Although she often had difficulty disciplining and controlling the children at their visits, her difficulties were understandable because she did not have control over the environment and did not have the time to enforce the consequences of the children's bad behavior. She also argues the fact the children were comfortable leaving her after the visits shows they were well-adjusted and her visits strengthened their well-being.

### **A. Standard of Review.**

Mother points out that there is a split of authority concerning the proper standard of review to a dependency court's determination whether the beneficial relationship exception of section 366.26, subdivision (c)(1)(B)(i) applies. (See, e.g., *In re I.F.* (2009)

180 Cal.App.4th 1517, 1527–1528 [substantial evidence standard generally applied in dependency cases]; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449 [abuse of discretion standard].)

We review the dependency court’s ruling under the substantial evidence standard, under which we determine whether there is substantial evidence to support the dependency court’s ruling by reviewing the evidence most favorably to the prevailing party and indulging all legitimate and reasonable inferences to uphold the court’s ruling. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297–298 [reviewing beneficial relationship exception for substantial evidence].)<sup>2</sup>

**B. The Trial Court Did Not Err in Finding the Beneficial Relationship Exception of Section 366.26, Subdivision (c)(1)(B)(i) Did Not Apply.**

Section 366.26 directs the juvenile court in selecting and implementing a permanent placement plan for a dependent child. The express purpose of a section 366.26 hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) If the court has decided to end parent-child reunification services, the legislative preference is for adoption. (*In re Celine R.* (2003) 31 Cal.4th 45, 53 [“if the child is adoptable . . . adoption is the norm”]; see *In re Marilyn H.* (1993) 5 Cal.4th 295, 307 [once reunification efforts have been found unsuccessful, the state has a “compelling” interest in “providing stable, permanent homes for children who have been removed from parental custody” and the court then must “concentrate its efforts . . . on the child’s placement and well-being, rather than on a parent’s challenge to a custody order”].) When the court finds by clear and convincing evidence the child is likely to be adopted, the statute mandates judicial termination of parental rights unless the parent opposing termination can demonstrate one of six enumerated exceptions applies. (§ 366.26, subd. (c)(1)(B); see *Celine R.*, at p. 53 [“court must order adoption and its

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<sup>2</sup> One court has observed the practical differences between the two standards are not significant. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) However, given the intensive factual nature of the dependency court’s task in ruling on whether the beneficial relationship exception applies and the important interests at stake, we find the substantial evidence standard more appropriate to our role as a reviewing court.

necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child”]; *In re Matthew C.* (1993) 6 Cal.4th 386, 392 [when child adoptable and declining to apply one of the statutory exceptions would not cause detriment to the child, the decision to terminate parental rights is relatively automatic].) To satisfy the parent-child exception to termination of parental rights in section 366.26, subdivision (c)(1)(B)(i), a parent must prove he or she has “maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i); see *In re Derek W.* (1999) 73 Cal.App.4th 823, 826 [“parent has the burden to show that the statutory exception applies”].)

The “benefit” prong of the exception requires the parent to prove his or her relationship with the child “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [“the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer”].) No matter how loving and frequent the contact, and notwithstanding the existence of an “emotional bond” with the child, “the parents must show that they occupy ‘a parental role’ in the child’s life.” (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419.) The relationship that gives rise to this exception to the statutory preference for adoption “characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

A court may consider the relationship between a parent and a child in the context of a dependency setting, e.g., amount of visitation permitted, whether the parent was ever the child's primary caretaker. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537–1538.) But the overriding concern is whether the benefit gained by continuing the relationship between the biological parent and the child outweighs the benefit conferred by adoption. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1155–1156; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Here, Mother and Father were able to reunify for a time with their children, but unfortunately the family's unstable housing situation made it very difficult for the parents to work on their reunification plans. Thus, although for the first few years of the children's lives Mother had occupied a parental role, after the family became homeless and destabilized and her reunification efforts were unsuccessful, Mother was not able to regain a parental role in the children's lives in spite of her consistent visitation with the children. Mother was unable to complete a drug treatment program and attempted to falsify certificates evidencing completion of courses required by her case plan. Her visits with the children demonstrated that she no longer occupied a parental role in the children's lives; rather, she had become a friendly visitor who brought them things and could not control them when they misbehaved. Furthermore, the family's consistently unstable housing situation, Father's incarceration, and the parents' intention to marry upon Father's release from prison in 2012 showed that the parents had not made sufficient steps towards ameliorating the problems in their family and home life that had led to the children's dependency proceedings.

On the other hand, the children were in a stable, loving home where their emotional, physical and developmental needs were being met. The children's prospective adoptive father had stable employment. The boys' behavior had improved and they were receiving necessary therapy to redress the emotional harm suffered while living with their parents. Gilbert was receiving speech therapy at school to address his language problems. The children were exposed to a normal routine and lifestyle and had taken an interest in sports due to their exposure to their older cousins.

These facts demonstrate the dependency court did not err in finding the benefit to the children of a stable, adoptive home outweighed any benefit they would receive from continuing their relationship with Mother.

**DISPOSITION**

The order of the superior court is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.